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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,593	04/21/2006	Francesco Ferraiolo	5405.P0027US	4111
23474 7590 07/20/2010 FLYNN THIEL BOUTELL & TANIS, P.C. 2026 RAMBLING ROAD KALAMAZOO, MI 49008-1631				
EXAMINER BONK, TERESA				
ART UNIT 3725		PAPER NUMBER		
MAIL DATE 07/20/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,593

Applicant(s)

FERRAILOLO, FRANCESCO

Examiner

TERESA M. BONK

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-41 and 46-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-41 and 46-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Sixth Paragraph of 35 USC § 112

The following is a quotation of the sixth paragraph of 35 U.S.C. 112:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

With regards to claim 49, Applicant appears to be invoking 35 U.S.C. 112, sixth paragraph: “means for fixing.” The Applicant’s specification cites “means of known type for fixing” on page 7, paragraph 4 and “fixing means” on page 9, paragraph 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 36-41 and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regards to **claim 36**, line 16, there is insufficient antecedent basis for “two adjacent ones of said wires.” It is not clear which “wires” are being referred to since several “wires” have been set forth prior to this line. In general, the last six lines of claim 36 are not clear: “each said metal cable being interposed between two adjacent ones of said wires in said array and being intertwined with one of said two adjacent ones of said wires on one side of said metal cable and intertwined with the other of said two adjacent ones of said wires on the other side of said metal cable. What is considered to be a “side” of the metal cable - generally, cables are cylindrical in

shape and don't have sides (this also applies to **claim 50**). The Examiner interprets that the metal cable should be between at least two wires, all positioned in same longitudinal direction, and the elements are to be intertwined with each other.

With regards to **claim 38**, now that multiple “metal cables” have been set forth in the independent claim 36, requiring “an additional...metal cable” is not clear.

With regards to **claim 40**, there is insufficient antecedent basis for “said portions.” Also see discussion above for claim 36 for regards to “two adjacent ones of said wires” phrase. For examination purposes, it is understood that the cable and the wires are twisted around each other in the longitudinal direction.

With regards to **claim 50**, there is insufficient antecedent basis for “said two wires” and “second reinforcing metal cable.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starr (US Patent 3,129,632), newly presented, in view of Vancraeynest et al. (hereafter “Vancraeynest”) (US Patent 6,168,118), previously presented – as best understood.

With regards to **claim 36**, as best understood, Starr discloses a protective wire net comprising: an array of elongate and longitudinally-extending elements comprising wires (7, 8, 9, and 10) and reinforcing members (20) arranged in side-by-side relation with one another, adjacent pairs of said elements being intertwined with one another at intertwining regions (12) defined by portions of the respective said elements which are twisted around one another, as seen in Figure 2, each said intertwining region consisting essentially of a pair of said elements intertwined with one another, said pair of said elements consisting essentially of one of said wires and one of said metal cables [for example: wire 10 and member 20] and as best understood, the member is between at least two wires, all in same longitudinal direction, and the elements are intertwined with each other, as seen in Figure 2.

With regards to **claim 37**, Starr discloses wherein said members are arranged at regular intervals with one another across said array and in an alternating manner with one or more of said wires, as seen in Figure 2.

With regards to **claim 38**, Starr discloses further comprising an additional elongate and longitudinally-extending member (4) having a portion around which one of said wires disposed adjacent said additional metal cable is twisted, said additional member defining a terminal longitudinally-extending edge of said protective wire net [Column 1, lines 55-60].

With regards to **claim 40**, Starr discloses the member and the wires are twisted around each other in the longitudinal direction, as seen in Figure 2.

Starr discloses the invention substantially as claimed except for the array comprising both wires and metal cables. **Vancraeynest** is relied upon to teach a fence or net (1) having an array of wires (2 and 3) and steel cable or wire (4), as seen in Figure 1. Therefore it would have been

obvious to one of ordinary skill in the art at the time the invention was made to substitute Starr's reinforcing members for Vancraeynest's metal cable because simple substitution of one known element obtains predictable results [KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007)].

With regards to **claim 39**, Vancraeynest also teaches of wherein said portions of the respective said elements which define said intertwining regions are doubly-twisted around one another, said array and said intertwining regions being disposed to define hexagonal shapes throughout said array such that said protective wire net comprises a double- twist net with hexagonal meshes, as seen in Figure 1 [Column 2, lines 50-65].

With regards to **claim 41**, Vancraeynest also teaches of comprising an additional metal cable or wire extending in a direction transverse to said longitudinally-extending wires elements and having a portion disposed longitudinally between two longitudinally-adjacent intertwining regions, as seen in Figure 1.

Claims 46-50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino et al. (hereafter "Meglino") (US Patent 5,056,761), newly presented, in view of Thommen, Jr. (hereafter "Thommen") (US Patent 5,524,875), previously presented.

With regards to **claim 46**, Meglino discloses a protective wire net comprising: an array of longitudinally-extending wires (42) arranged in side-by-side relation with one another, adjacent pairs of said wires being intertwined with one another at intertwining regions (48) defined by portions of the respective said wires which are twisted around one another, as seen in Figure 1; and retaining slot or strip (78) extending in a direction transverse to said array of longitudinally-

extending wires and being disposed between two longitudinally-adjacent and longitudinally spaced-apart intertwining regions as to be intertwined with non-twisted portions of said wires extending longitudinally between said two longitudinally-adjacent and longitudinally spaced-apart intertwining regions as said retaining slat or strip extends transversely across said array, as seen in Figure 10 [Column 3, lines 10-20].

With regards to **claim 50**, Meglino discloses comprises a longitudinally-extending second retaining slat or strip (86) disposed between two adjacent ones of said wires in said array, said second retaining slat or strip being intertwined with one of said two wires on one side of said second retaining slat or strip and intertwined with the other of said two wires on the other side of said retaining slat or strip, as seen in Figure 10.

It is noted that Meglino discloses that the slats or strips 78 can be substituted for flattened tubes 76 [Column 3, lines 10-20]. Meglino discloses the invention substantially as claimed except for a metal cable or wire extending in a direction transverse to said array of wires and a longitudinally-extending second metal cable. **Thommen** is relied upon to teach a fence or net (1) having an array of longitudinally-extending wires (5) and wire rope (6) that extends in a direction transverse to said array, as seen in Figure 3. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Meglino's strips for Thommen's wire rope because simple substitution of one known element obtains predictable results [KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007)].

With regards to **claim 47**, Thommen also teaches wherein said wire rope is a first metal cable and said protective wire net further comprises a longitudinally-extending second metal cable having a portion around which one of said wires disposed adjacent said second metal cable

is twisted, said first metal cable being a bent portion of said second metal cable [See attached Figure 3 on page 7 of this Office action].

With regards to **claim 48**, Thommen also teaches wherein said wire rope (6) has terminal ends and a ring-shaped anchor (8) is disposed on each said terminal end of said wire rope, one of said wires extending through each said anchor (via loops 10), as seen in Figure 2.

With regards to **claim 49**, Thommen also teaches further comprising means for fixing (8) said protective wire net to a slope, as seen in Figure 2 [Column 2, lines 53+].

With regards to **claim 50**, as best understood, Thommen also teaches wherein said metal cable or wire is a first metal cable and said protective wire net further comprises a longitudinally-extending second reinforcing metal cable disposed between two adjacent ones of said wires in said array, said second reinforcing metal cable being intertwined with one of said two wires on one side of said second reinforcing metal cable and intertwined with the other of said two wires on the other side of said second reinforcing metal cable.

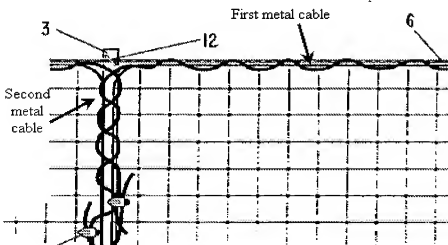


Figure 3 from Thommen US Patent 5,524,875

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meglino in view of Vancraeynest.

With regards to **claim 46**, Meglino discloses a protective wire net comprising: an array of longitudinally-extending wires (42) arranged in side-by-side relation with one another, adjacent pairs of said wires being intertwined with one another at intertwining regions (48) defined by portions of the respective said wires which are twisted around one another, as seen in Figure 1; and retaining slat or strip (78) extending in a direction transverse to said array of longitudinally-extending wires and being disposed between two longitudinally-adjacent and longitudinally spaced-apart intertwining regions as to be intertwined with non-twisted portions of said wires extending longitudinally between said two longitudinally-adjacent and longitudinally spaced-apart intertwining regions as said retaining slat or strip extends transversely across said array, as seen in Figure 10 [Column 3, lines 10-20].

It is noted that Meglino discloses that the slats or strips 78 can be substituted for flattened tubes 76 [Column 3, lines 10-20]. Meglino discloses the invention substantially as claimed except for a metal cable or wire extending in a direction transverse to said array of wires. **Vancraeynest** is relied upon to teach a fence or net (1) having an array of longitudinally-extending wires (2 and 3) and steel cable or wire (4) that extends in a direction transverse to said array, as seen in Figure 1. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Meglino's strips for Vancraeynest's metal cable because simple substitution of one known element obtains predictable results [KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007)].

Response to Arguments

Applicant's arguments with respect to claims 36-41 and 46-49 have been considered but are moot in view of the new ground(s) of rejection. The amendments requiring at least the metal cable or wire to be intertwined with non-twisted portion and requiring at least both longitudinal wires and metal cables in the array necessitated the new grounds of rejection.

On pages 10-12, the Applicant argues the fact that the prior art of record requires three elements or wires. It is not clear what the importance of this statement is or how it relates to the present claim language. Therefore, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

It is noted that the Applicant has added the language "consisting essentially of" into claim 36. For the purpose of applying prior art under 35 U.S.C. 103, "absent clear indication in the specification or claims of what the basic and novel characteristics are, "consisting essentially of" will be construed as equivalent to "comprising" [MPEP 2111.03].

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa M. Bonk whose telephone number is (571)272-1901. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached on 571-272-4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Teresa M. Bonk/
Examiner, Art Unit 3725